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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,351	12/15/2003	Jennifer C. Perotti	85802RRS	4649

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EXAMINER

LEVINE, ADAM L

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,351

Applicant(s)

PEROTTI ET AL.

Examiner

Adam Levine

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>March 29, 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to for the reasons indicated in the attached "Notice of Draftsperson's Patent Drawing Review," PTO-948. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. "A Virtual Garment Try-on Device," is suggested.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

Claim 11 is objected to because of the following informalities: the wording of the claim makes it indeterminable whether the all of the listed elements are mutually exclusive and intended to be included in the alternative, or if more than one of them may be included in the same embodiment. Appropriate correction is required.

Claim 16 is objected to because of the following informalities: there appear to be extra words inserted out of context. As a result the claim is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Appropriate correction is required.

Claim 19 is objected to because of the following informalities: "Accessory" should be inserted after "memory," and the word "from" in the second line should be deleted. Appropriate correction is required.

Claim 25 is objected to because of the following informalities: Between "device" and "of claim 22," the word "after" should be deleted. Appropriate correction is required.

Claim 31 is objected to because of the following informalities: Claim 31 recites the limitation "the personal computing device" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The database is introduced in claim 1 in a manner that renders it merely descriptive of the controller. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See *In re Hutchinson*, 69 USPQ 138. It is therefore unclear in claim 2 whether the database is or is not an element of the device. This is exacerbated by the vagueness of the word "separate" in this context. The term "separate" in claim 2 is a relative term that renders the claim indefinite. The term "separate" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It cannot be determined whether the database is intended to be an element of the device. Appropriate correction is required.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Where applicant acts as his or her own lexicographer to specifically define a term of a claim the written description must clearly define the claim term and set forth the definition so as to put one reasonably skilled in the art on notice that the applicant intended to so define that claim term. The term "source of information" is claimed here as an element of the electronic memory accessory while the specification defines it as an element of an image processing device. The term is therefore indefinite because the specification defines the term differently than the claim.
3. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 recites the limitation "source of information." There is insufficient antecedent basis for this limitation in the claim.

Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5,7-28,30, and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Kagami (US Patent No. 5,724,522).

Kagami teaches all the limitations of claims 1-5, 7-28, 30, and 32-35. For example, Kagami discloses a clothing modeling system and method that stores information on clothing design, appearance, and fit, and stores information on the users' personal measurements, and performs the service of allowing the customer to virtually try-on clothing using a device such as a computer. Kagami further discloses:

- an image display: (see at least Figs.7,8; column 3 lines 54-58);
- a sensor: a reader device for reading a tracking memory (see at least Figs.3,4; column 8 lines 43-52).
- a memory device: (see at least Figs.1-4,9,10; column 3 lines 50-64, column 11 lines 32-40); containing personal profile information for the user including at least one dataset composed of user fit data and user image data wherein the personal profile information further includes user personal preference information for preferred and non-preferred items identifying at least one of a preferred item color, style, fit, and size (see at least column 5 line 58 – column 6 line 12, column 7 lines 44-67. Please note: with regard to the memory device claims, any

information that happens to be stored on the device is descriptive material that will not distinguish the claimed invention from the prior art in terms of patentability. Also please note: It suffices that information stored reflects the appearance and fit of the garment. Beyond that, the particular elements of personal preference information are descriptive material and are not functionally involved in the recited steps of the method. Because they have no functional role in the method they are non-functional descriptive material. This descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381 , 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106.); personal profile information includes at least one dataset for an additional user which contains user fit data and user image data for the additional user, and wherein the controller permits the user to select the additional user dataset and enables generation and display of a display image of the item and the additional user based upon item fit data and item image data for the additional user (column 7 lines 21-26); personal profile information further includes item fit data and item image data for a plurality of previously displayed generated images and a plurality of previously purchased items and wherein the user input device and the controller cooperate to permit the user to view a generated image of a previously purchased item on the display (see at least column 9 lines 24-27); includes a slot for receiving a removable memory having the database stored thereon and wherein the controller is adapted to download

item fit data and item image data from the database on the removable memory (see at least column 3 lines 53-62, column 7 lines 22-35, column 8 lines 17-19).

- electronic memory accessory: with executable instructions for at least one of a personal digital assistant, personal computer, handheld computer, kiosk, or point of sale terminal (see at least column 3 line 50 – column 4 line 19).
- a user input device: (see at least abstract, Figs.1,3,9; column 2 lines 10-27, column 3 lines 50-52; column 11 lines 32-35); one dedicated function key, at least one soft key, a PDA-like keyboard or a stylus pad (see at least Fig.2, column 7 lines 62-67); input device is adapted to receive a change in perspective input action and the controller generates an image that simulates the appearance of the user and item as viewed from different perspectives (see at least column 5 line 58 – column 6 line 12. Please note: it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See *In re Hutchinson*, 69 USPQ 138).
- a controller: (see at least Figs.1,3,4; column 2 lines 6-31, column 4 lines 31-57); adapted to retrieve item fit data and item image data for the item from a database, wherein the database is separate from the virtual shopper device (see at least Fig.3,4, column 4 line 67 – column 5 line 5, column 7 lines 54-58, column 9 lines 3-6); a communication module for establishing communication with the database, a communication circuit (see at least abstract, Fig.2,4,9,10; column 2 lines 6-41, column 4 lines 31-57, line 59 – column 5 line 12); to generate a

display image simulating the appearance of the item as worn by the user, said image data being generated based upon the item fit data, the item image data, the user fit data and the user image data, and to cause the image display to present the display image, wherein the controller permits the user to select options for the generated image based upon related item options stored in the database, obtains item option data for the selected item option from the database and generates a revised display image based upon the obtained item option data, the user fit data, and the user image data, and displays the revised display image, input and controller permit the user to select at least one of scene options and accessory options (see at least abstract, Figs.1,3-8; column 8 lines 43-52); additional item fit data and item image data that does not correspond to an item of interest to the user (Please note: The additional fit and image data is descriptive material and is not functionally involved in the recited steps of the method. Because it has no functional role in the method it is non-functional descriptive material. This descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106.); store data for selected generated images in the memory device to allow each generated image to be presented later (see at least column 7 lines 22-35, column 8 lines 17-19); prevents database from obtaining image data personal fit data from memory device (see at least column 1 line 65 – column 2 line 31, column 2 lines 42-53). Please note: it has been held that the recitation that an element is “adapted to”

perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See *In re Hutchinson*, 69 USPQ 138.

- sensing more than one tracking memory with each tracking memory associated with an item, obtaining fit data for each item, and identifying at least one item of interest by detecting items having fit data that correspond to user fit data, having at least one of style color and fit data that correspond to at least one of the style, color and fit data in the personal profile (see at least Fig.7-8, column 8 lines 43-67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6,29,31, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kagami (US Patent No. 5,724,522) in view of Numaoka (US Pub. No. 2003/0016844).

Kagami teaches all of the above as noted under the 102(b) rejection and teaches a) permitting the user to select options for the item, b) using the option data to generate an image, c) storing the item option data in a database, d) retrieving item option data from the database to generate a revised image, and e) displaying the images. Kagami,

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however, does not disclose the controller determining from the database a location of an item having the selected item option. Numaoka teaches a clothing modeling system and method that stores information on clothing design, appearance, and fit, and stores information on the users' personal measurements, and performs the service of allowing the customer to virtually try-on clothing using a device such as a computer, and also teaches the controller determining from the database a location of an item having the selected item option (see at least page 10 para.0158-0159). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of Kagami in order to determine from the database a location of an item having the selected item option as taught by Numaoka in order to facilitate the trying on of the item by the user and thereby increase sales using the system and method in commerce.

Kagami teaches all of the above as noted and teaches a) a communication network connected to a database, b) using a communication network to receive item fit and image data, c) using the communication network to transmit generated display images, and d) using various forms of high speed communication network. Kagami, however, does not disclose the communication module including a device for establishing wireless communication via a wireless network, the memory having information for using wireless signal to communicate over a communication network connected to the database wherein the information for requesting and retrieving from database includes information for wirelessly retrieving information from the database using the signal. Numaoka teaches a) a communication network connected to a

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database, b) using a communication network to receive item fit and image data, c) using the communication network to transmit generated display images, and d) using various forms of high speed communication network, and also teaches the communication module including a device for establishing wireless communication via a wireless network, the memory having information for using wireless signal to communicate over a communication network connected to the database wherein the information for requesting and retrieving from database includes information for wirelessly retrieving information from the database using the signal (see at least page 5 para.0072, page 7 para.0106, page 8 para.0118). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of Kagami to include a communication module with a device for establishing wireless communication via a wireless network and memory having information for using wireless signal to communicate over a communication network connected to the database wherein the information for requesting and retrieving from database includes information for wirelessly retrieving information from the database using the signal, as taught by Numaoka in order to facilitate the logical advancement of the system and method by adapting industry accepted advancements in technology to promote the high speed communication network, thereby making the system more accessible and useful, and generating greater sales using the system in commerce.

Kagami teaches all of the above as noted and teaches a) a tracking memory having information regarding items, b) retrieving item fit and image data from the database, c) generating a display image based on item fit and image data and user fit

and image data, and d) determining available options for the items, informing the user of the availability of the options, and e) forming a display image based on the options.

Kagami, however, does not disclose determining the nearest retail location having the item of interest available for purchase. Numaoka teaches a clothing modeling system and method that a) accesses, stores, and provides information on clothing design, appearance, and fit, and stores information on the users' personal measurements, b) performs the service of allowing the customer to virtually try-on clothing, c) coordinates with local stores, and also teaches determining the nearest retail location having the item of interest available for purchase (see at least page 7 para.0101-0103). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of Kagami in order to determine the nearest retail location having the item of interest available for purchase, as taught by Numaoka, in order to provide the opportunity to acquire the item more quickly once it has been virtually tested, thereby increasing immediate sales and encouraging greater commerce using the system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

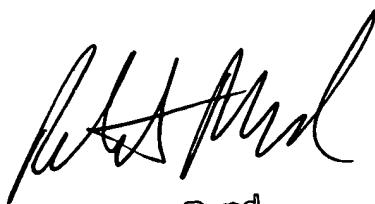
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 571.272.7159. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Adam Levine
Patent Examiner
March 6, 2006

A handwritten signature in black ink, appearing to read 'Robert M. Pond', is written over a rectangular stamp.

Robert M. Pond
Primary Examiner